

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

LITITZ MUTUAL INSURANCE
COMPANY, a Corporation,

Plaintiff,

vs.

Case No. 4:14-CV-00141

MARDELL McGEE,
Serve: 10236 Halls Ferry Road
St. Louis, MO 63136

JURY TRIAL DEMANDED

and

MCM ASSET MANAGEMENT LLC,
Serve: Mardell P. McGee Smith
10236 Halls Ferry Road
St. Louis, MO 63136
Registered Agent

and

NATIONWIDE LENDING SERVICES
LLC,
Serve: Mardell Patrick McGee
10236 Halls Ferry Road
St. Louis, MO 63136
Registered Agent

and

JON E. FUHRER COMPANY,
Serve: Jon E. Fuhrer
11623 Lakeshore Drive
St. Louis, MO 63141
Registered Agent

Defendants.

COMPLAINT FOR DECLARATORY JUDGMENT

COMES NOW plaintiff Lititz Mutual Insurance Company (Lititz Mutual) pursuant to 28 USC §2201 and Rule 57 of the Federal Rules of Civil Procedure and for its Complaint for Declaratory Judgment against defendants states as follows:

1. Plaintiff is a corporation organized and existing under the laws of the State of Pennsylvania with its principal office and place of business in the City of Lititz, Pennsylvania, and was and is authorized to engage in business in the State of Missouri.

2. Defendant Mardell McGee (a/k/a Mardell P. McGee-Smith and Mardell Patrick McGee) is a citizen and resident of the County of St. Louis, State of Missouri.

3. Defendant MCM Asset Management LLC is a Missouri limited liability corporation solely owned and controlled by Mardell McGee with its principal office and place of business at 10236 Halls Ferry Road, St. Louis, MO 63136.

4. Defendant Nationwide Lending Services LLC is a Missouri limited liability corporation solely owned and controlled by Mardell McGee with its principal office and place of business at 10236 Halls Ferry Road, St. Louis, MO 63136.

5. Defendant Jon E. Fuhrer Company is a Missouri corporation with its principal office and place of business at 11623 Lakeshore Drive, St. Louis, MO 63141.

6. The Complaint for Declaratory Judgment is brought pursuant to Title 28 USC §2201 et. seq. and is solely between citizens and residents of different states; the amount in controversy, exclusive of interest and costs, exceeds the sum of \$75,000.00.

7. Plaintiff did issue its Homeowner's Policy No. HO 2009058 to Mardell McGee with an effective date of January 1, 2013. Said policy provided coverage for property located at 1415 Kienstra Lane, Calverton Park, St. Louis County, Missouri 63135. The title holder of

record of 1415 Kienstra Lane was MCM Asset Management LLC. The mortgagee listed on the policy is Nationwide Lending Services LLC. A copy of said policy in effect on June 13, 2013 is attached hereto and made a part hereof, Exhibit 1.

8. On or about June 13, 2013, 1415 Kienstra Lane and its property within was damaged by fire resulting in the filing of a claim under the Lititz policy by Mardell McGee.

9. The Lititz policy contains the following relevant exclusion:

SECTION I – EXCLUSIONS

A. We do not insure for loss caused directly or indirectly by any of the following. Such loss is excluded regardless of any other cause or event contributing concurrently or in any sequence to the loss. These exclusions apply whether or not the loss event results in widespread damage or affects a substantial area.

8. Intentional Loss

Intentional Loss means any loss arising out of any act an “insured” commits or conspires to commit with the intent to cause a loss.

In the event of such loss, no “insured” is entitled to coverage, even “insureds” who did not commit or conspire to commit the act causing the loss.

10. The claim and loss of June 13, 2013 is excluded under the Lititz policy and under the law because the insured Mardell McGee set the fire of June 13, 2013 or conspired to set the fire with the intent to cause a loss.

11. The Lititz policy contains the following relevant Condition:

SECTION I – CONDITIONS

O. Concealment Or Fraud

We provide coverage to no “insureds” under this policy if whether before or after a loss, an “insured” has:

- 1. Intentionally concealed or misrepresented any material fact or circumstance;**
 - 2. Engaged in fraudulent conduct; or**
 - 3. Made false statements;**
- relating to this insurance.**

12. There is no coverage and defendants are barred from recovery under the Lititz policy because defendant Mardell McGee intentionally concealed and misrepresented material facts and circumstances, engaged in fraudulent conduct and made false statements with regard to:

1. the cause and extent of the claimed loss;
2. prior losses and insurance claims;
3. the mortgagee.


13. Lititz Mutual is not liable under the Lititz Mutual policy to pay any claim of defendants and defendants are barred from recovery because of their breach of the policy conditions and/or by virtue of the Lititz Mutual Policy’s exclusion and under the law.

14. Plaintiff further states there exists an actual, justiciable controversy between plaintiff and defendants with regard to coverage under the Lititz Mutual policy because of the fire and loss of June 13, 2013.

15. On information and belief defendant Jon E. Fuhrer Company claims an interest in the property at 1415 Kienstra Lane and in any proceeds of the Lititz policy.

16. Plaintiff has no adequate remedy at law.

WHEREFORE, plaintiff Lititz Mutual Insurance Company prays the Court declare the rights of the parties under the Lititz policy and enter judgment finding and declaring defendants are not entitled to coverage under the Lititz Mutual policy and that plaintiff is not liable under the Lititz Mutual policy for the claims of defendants because of the fire and loss of June 13, 2013.



Christopher P. Leritz, #39864MO

cleritz@leritzlaw.com

Joseph L. Leritz, #15395MO

jlleritz@leritzlaw.com

LERITZ, PLUNKERT & BRUNING, P.C.

555 Washington Avenue, Suite 600

St. Louis, MO 63101

(314) 231-9600

(314) 231-9480 – Facsimile

ATTORNEYS FO PLAINTIFF